NO. 46579-5-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

JUSTIN HAUGEN
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR LEWIS COUNTY

The Honorable Nelson Hunt, Judge

BRIEF OF APPELLANT

LISE ELLNER
Attorney for Appellant

LAW OFFICES OF LISE ELLNER
Post Office Box 2711
Vashon, WA 98070
(206) 930-1090
WSB #20955

TABLE OF CONTENTS

Page

A. ASSIGNMENTS OF ERROR 1

Issues Presented on Appeal 1

B. STATEMENT OF THE CASE 1

a. Franks Hearing

C. ARGUMENT 7

1. THE POLICE ILLEGALLY ENTERED MR. HAUGEN'S HOME TO ARREST A NON-RESIDENT WITHOUT PROBABLE CAUSE OR EXIGENT CIRCUMSTANCES TO PERMIT THE WARRANTLESS INTRUSION UNDER BOTH THE FOURTH AMENDMENT AND THE WASHINGTON CONSTITUTION.

a. Police Warrantless Intrusion Violated Article 1, Section 7.

b. Arrest Warrant For Non-Resident

c. No Exigent Circumstances: No Evidence of Hot Pursuit.

d. Protective Sweep a Pretext

e. No Independent Source.

f. Remedy is Suppression Under Art. 1, Sec. 7.

g. Suppression Required For Violation of Fourth Amendment.

2. THE POLICE MADE RECKLESS AND MATERIAL OMMISIONS OF FACT IN SUPPORT OF A TELEPHONIC REQUEST FOR A SEARCH WARRANT THAT IF PROVIDED WOULD HAVE PRECLUDED ISSUANCE OF THE SEARCH WARRANTS.

D. CONCLUSION.....19

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Anderson,
105 Wn.App. 223, 19 P.3d 1094 (2001).....15

State v. Afana,
169 Wn.2d 169, 233 P.3d 879 (2010).....13

State v. Burke,
163 Wn.2d 204181 P.3d 1 (2008).....32

State v. Clark,
143 Wn.2d 731, 24 P.3d 1006 (2001).....35

State v. Chrisman,
100 Wn.2d 814, 676 P.2d 419 (1984).....13, 18

State v. Chenoweth,
160 Wn.2d 454, 158 P.3d 595 (2007).....34, 36, 37

State v. Cord,
103 Wn.2d 361, 693 P.2d 81 (1985).....36

State v. Counts,
99 Wn.2d 54, 659 P.2d 1087 (1983).....19

State v. Easter,
130 Wn.2d 228, 922 P.2d 1285 (1996).....32

State v. Eisfeldt,
163 Wn.2d 628, 185 P.3d 580 (2008).....13, 14

State v. Eserjose,
171 Wn.2d 907, 259 P.3d 172 (2010).....26-30

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Ettenhoffer,
119 Wn. App. 300, 79 P.3d 478 (2003).....31, 32

State v. Graham,
130 Wn.2d 711, 927 P.2d 227 (1996).

State v. Hatchie,
161 Wn.2d 390, 166 P.3d 698 (2007).....14, 15

State v. Hatchie,
133 Wn.App. 100, 135 P.3d 698 (2007)
aff'd,161 Wn.2d 390.....14

State v. Hopkins,
113 Wn.App. 954, 55 P.3d 691 (2002).....21-25, 27

State v. Kull,
155 Wn.2d 80, 18 P.3d 307 (2005).....24-27, 31

State v. McKinney,
49 Wn.App. 850, 746 P.2d 835 (1988).....1, 9, 10, 17, 18

State v. Morse,
156 Wn.2d 1, 123 P.3d 832 (2005).....13

State v. Norman,
145 Wn.App. 578, 40 P.3d 1161 (2002).....34

State v. O'Neill,
148 Wn.2d 564, 62 P.3d 489 (2003).....13

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Patton,
167 Wn.2d 379, 219 P.3d 651 (2009).....13

State v. Ross
141 Wn.2d 304, 4 P.3d 130 (2000).....30, 31

State v. Smith,
177 Wn.2d 533, 303 P.3d 1047 (2013).....29, 30

State v. Valdez,
167 Wn.2d 761, 224 P.3d 751 (2009).....13, 14

State v. White,
97 Wn.2d 92, 640 P.2d 1061 (1982).....31, 32

State v. Winterstein,
167 Wn.2d 620, 220 P.3d 1226 (2009).....12, 15-18

State v. Young,
123 Wn.2d 173, 867 P.2d 593 (1994).....14

In re Welfare of Sego,
82 Wn.2d 736, 513 P.2d 831 (1973).....36

FEDERAL CASES

Brown v. Illinois,
422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975).....26, 27

Chapman v. California,
386 U.S. 18, 87 S.Ct. 824, 17, L.Ed.2d 705 (1967). 32

Franks v. Delaware,
438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).....34, 36

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Maryland v. Buie,
494 U.S. 325, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990).....21, 22

Steagald v. United States,
451 U.S. 204, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981).....15, 32

Terry v. Ohio,
392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).....17, 20

United States v. Santana,
427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976).....20

OTHER STATES CASES

State v. Theodor,
8 Cal.3d 77, 104 Cal.Rptr. 226, 501 P.2d 234 (1972).....35

State v. Traub,
151 Conn. 246, 196 A.2d 755 (1963).....27
.

STATUTES, RULES AND OTHERS

Wash. Const. article I, section 7..... *ad passim*

United States Constitution Fourth Amendment..... *ad passim*

2 *Wayne R. Lafave, Search and Seizure:*
A Treatise on The Fourth Amendment,
section 4.4(d) at 558 (4th ed. 2004).....35

RCW 10.79.015.....36

CrR 2.3.....36

A. ASSIGNMENTS OF ERROR

1. The initial warrantless entry into Haugen's home violated both his state and federal constitutional rights.

2. The police intentionally or recklessly omitted facts in support of a search warrant that if provided would have precluded issuance of the warrants.

3. The trial court erred by entering *Franks* conclusion of law 1 that Haugen failed to meet his burden challenging the search warrant affidavit.

4. The trial court erred by entering *Franks* conclusion of law 3 that the warrantless home entry was valid under *State v. McKinney.*

5. The trial court erred by entering *Franks* conclusion of law 4 that the police were permitted to conduct a second search of Haugen's home to conduct a sweep after the initial illegal entry and protective sweep of the entire apartment after the arrest of Fiman, a non-resident.

6. The trial court erred by entering *Franks* conclusion of law 5 that Officer Haggerty did not recklessly omit the fact that Fiman was

a non-resident when applying for a search warrant of Haugen's home.

7. The trial court erred by entering *Frank's* conclusion of law 6 that it was "understandable error as to when the drugs were found by CCO Boone".

8. Because there was no attenuation, the trial court erred by entering *Franks* conclusion of law 7 that the facts in support of the warrant to search Haugen's bedroom came from an independent source from the initial warrantless intrusion sufficient to justify the second search of Justin Haugen's bedroom.

9. The trial court erred by entering *Franks* conclusion of law 8 denying the *Franks* motion.

10. The trial court erred in denying the motion to suppress evidence seized after the warrantless entry into Haugen's home.

11. The trial court erred in admitting evidence obtained from the second search where there was no attenuation between the illegal home entry and Haugen's later alleged response to police questioning that he had drugs in his room.

12. There were no exigent circumstances to permit the warrantless home entry.

13. The trial court failed to set forth substantial evidence in support of its conclusions that the warrantless search was legal.

14. Stipulated Trial finding #6 is not supported by evidence in the record that Fiman was ordered out of B. Haugen's bedroom.

Issues Presented on Appeal

1. Did the initial police warrantless entry into Haugen's home violate his state and federal constitutional rights?

2. Did the police intentionally or recklessly omit the material fact in support of a search warrant that the arrestee was only a guest in the Haugen residence, which was necessary to establish probable cause for issuance of the warrant?

3. Did the trial court err by entering Franks conclusion of law 1 that Haugen failed to meet his burden challenging the search warrant affidavits?

4. Did the trial court err by entering *Franks* conclusion of law 3 that the warrantless home entry was valid under *State v. McKinney?*

5. Did the trial court err by entering *Franks* conclusion of law 4 that the police were permitted to conduct a second search of Haugen's residence to conduct a sweep after the initial illegal entry and after the

arrest of Fiman?

6. Did the trial court err by entering *Franks* conclusion of law 5 that Haggerty did not recklessly omit the fact that Fiman was a non-resident when applying for a search warrant of Haugen's home?

7. Did the trial court err by entering *Frank's* conclusion of law 6 that was it "understandable error as to when the drugs were found by CCO Boone"?

8. Did the trial court err by entering *Franks* conclusion of law 7 that the facts in support of the warrant to search Haugen's bedroom came from an independent source from the initial warrant to search Brian Haugen's bedroom when there was no attenuation between the illegal entry and the questioning of Haugen?

9. Did the trial court err by entering *Franks* conclusion of law 8 denying the *Franks* motion?

10. Did the trial court err in denying the motion to suppress evidence seized after the warrantless entry into Haugen's home?

11. Without authority of law to enter Haugen's residence, was there sufficient attenuation between the illegal home entry and Haggerty's following and questioning Haugen on the way to the back

bedroom which was not part of the first search warrant?

12. Were Haugen's privacy rights violated where Haugen did not give consent, the suspect was not fleeing, and there were no other exigent circumstances to permit the warrantless home entry?

13. Did the state fail to establish substantial evidence in support of its conclusions that the warrantless searches were legal?

B. STATEMENT OF THE CASE

The defense moved to suppress evidence obtained in violation of article 1, section 7 and the United States Constitution Fourth Amendment. RP 5, 7; CP 15. The defense submitted a declaration and argued that the police, who were looking to arrest Mr. Fiman on a four month old outstanding arrest warrant knew that Mr. Fiman did not live at the Haugen brothers home, but nonetheless, wrote an affidavit in support of a search warrant of the Haugen brother home which omitted the fact that Mr. Fiman did not live with Justin and Brian Haugen (J. Haugen and B. Haugen). CP 15; 16-38; RP 5. The trial court denied the motion, based on the facts presented in the declaration and motion to suppress. CP 16-38; 41-54; RP 68-74.

Based on an anonymous tip that Fiman was present at the Haugen residence, Officer Haggerty, CCO Boone (Fiman was on probation) and other

officers, travelled to Haugen's residence and saw Brian Haugen (Justin Haugen's brother) through an upstairs window and asked B. Haugen to meet him at the door. When B. Haugen opened the door, Haggerty saw Fiman in the hallway enter the first bedroom and then exit to the hallway. CP 39-57. Haggerty entered the home without permission and arrested Fiman without incident in the hallway. Id.

The police documents indicated that Haggerty entered the Haugen residence without a warrant and without permission and arrested Fiman on an old arrest warrant, even though Haggerty knew that Fiman did not live at the Haugen residence. RP 5; CP 16-57. The police report listed J. Haugen's address as: 1013 Scammon Creek Road Apt. #J-6, Centralia, Washington. CP. 6-9, 15-38. Haggerty's paperwork listed Fiman's address as 3621 McElfresh Rd SW, in Centralia, Washington. CP 39-57.

Even though Fiman was secured in handcuffs, the police conducted a "security sweep" of the entire apartment because other people came into view from other areas of the apartment. After the security sweep of the entire apartment and successful arrest of Fiman, CCO Boone entered B. Haugen's bedroom a second time and saw a scale with residue. CP 16-38; 41-57. After Fiman was handcuffed and advised of his rights, Fiman confirmed the residue

was methamphetamine. Id. When Boone asked about the scale and safe in B. Haugen's bedroom, Fiman stated that the safe was not his but that he stored his methamphetamine in the safe. CP 16-38; 41-57. B. Haugen claimed ownership of the safe. Id. Based on this information Haggerty sought and obtained a search warrant for B. Haugen's bedroom, without informing Judge Buzzard that Fiman was not a resident. CP 41-57. (The entire police report and telephonic warrant applications are attached as Appendix A.)

Haggerty wrote in his police report that he had once arrested Haugen for conspiracy to possess drugs and had heard that J. Haugen was known to possess drugs. CP 41-57.

When Haggerty served the search warrant for the first bedroom, J. Haugen asked to retrieve his cell phone from his own bedroom. Even though Haggerty never left the premises and the police had conducted a security sweep of the entire apartment, Haggerty followed J. Haugen to his back bedroom and asked him if he had any drugs. J. Haugen denied telling Haggerty that he had methamphetamine in his bedroom. CP 41-67. Based on Haggerty's assertion that J. Haugen admitted to having drugs in his bedroom, Haggerty sought and obtained a second warrant to search J. Haugen's bedroom. CP 41-57. Again, Haggerty failed to disclose that Fiman was not a

resident. Haggerty found in J. Haugen's bedroom, 10 pills of Alazopram, 7 pills of Clonazepam and pipes for methamphetamine use. CP 41-57.

The Haugen brothers shared the apartment with their sister. B. Haugen was charged with illegal possession of drugs located in the initial bedroom searched, but the trial court suppressed the evidence based on the initial warrantless intrusion into the Haugen residence. 1RP 5 (March 27, 2014); CP 1-4. In this case, the trial judge refused to follow that ruling incorrectly stating that that case was briefed differently, but in fact, J. Haugen filed a notice of intent and to join in his brother's motion to suppress. CP 5. (Notice of Intent to Join Co-Defendant Motion to Suppress February 18, 2014).

The court's ruling is a follows:

> THE COURT: I'm not going to give any credence to that, because this is a different case, and it's being briefed differently, it's being handled differently, so they may have conceded, but that's actually not even part of this record.

RP 5.

The trial court denied the *Franks* motion to dismiss challenging the validity of the warrant. CP 68-74. The trial court entered the following findings and conclusions:

1. The defend ant has not met its burden in challenging the sufficiency of the search Warrant affidavit.

2. For purposes of this motion, there was no declaration presented to indicate that Mr. Fiman did not live in the home law enforcement searched.

3. Law enforce111en t was allowed to enter the residence to place M r. Fi111an under arrest when he was observed inside the home. The case of *State v. McKinney* , 49 Knapp. 850, applies to l law enforcement 's entry in the s case.

4. After Mr. Fiman was placed under arrest, law enforcement was allowed to conduct asecurity sweep, given the number of people coming from the back of the home.

5. There is no indication of a deliberate misrepresentation, statement made with reckless disregard, or a material omission on the part of Officer Haggerty in applying for the search warrant.

6. I t was an understandable error as to when the drugs were found by CCO Mike Boone, given the layout of the home and the posit ion of Officer Haggerty during the security sweep by other officers.

7. The facts leading to the warrant used to search Justin Haugen 's bedroom came fromn an independent source from the initial warrant law

enforcement obtained to search 13rian Haugen 's bed room.

8. The defendant's *Franks* motion challenging the search warrant affidavit is denied.

CP 68-74. The state agreed that the police knew that Fiman was not a resident but argued that Haggerty was not required to inform judge Buzzard because under *State v. McKinney*, the police were entitled to enter the Haugen residence to serve the arrest warrant. CP 58-65.

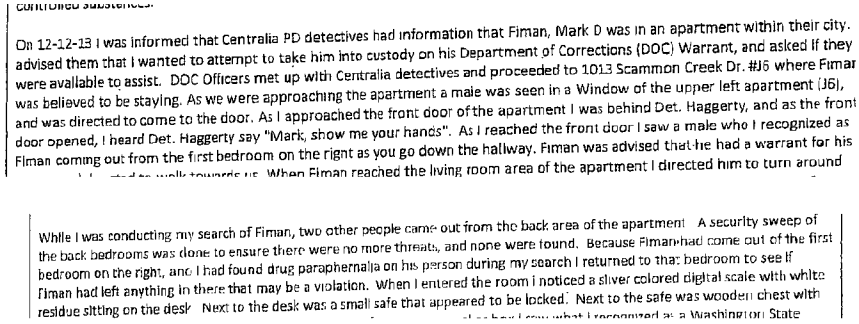
Following a stipulated trial, the court entered findings and conclusions attached hereto as Appendix A. CP 70-74. Stipulated trial finding # 6 states that Fiman was ordered out of B. Haugen's bedroom but the police report indicates that Fiman quickly ducked into and immediately re-entered the hallway before the police made contact with him . CP 41-57. In relevant part, page 2 of Haggerty's police report is as follows.

Beyond Brian I saw

Fiman walking down the hallway towards us. I told Fiman that he was under arrest and entered the apartment. Fiman quickly stepped into the first bedroom on the right as we entered the apartment before exiting it. Fiman was taken into custody by CCO Boone without issue.

numerous people such as Justin Haugen,

CP 41-57. CCO Boone filed a report as well. In relevant part it provides:



controlled substances.

On 12-12-13 I was informed that Centralia PD detectives had information that Fiman, Mark D was in an apartment within their city. advised them that I wanted to attempt to take him into custody on his Department of Corrections (DOC) Warrant, and asked if they were available to assist. DOC Officers met up with Centralia detectives and proceeded to 1013 Scammon Creek Dr. #J6 where Fimar was believed to be staying. As we were approaching the apartment a male was seen in a Window of the upper left apartment (J6), and was directed to come to the door. As I approached the front door of the apartment I was behind Det. Haggerty, and as the front door opened, I heard Det. Haggerty say "Mark, show me your hands". As I reached the front door I saw a male who I recognized as Fiman coming out from the first bedroom on the right as you go down the hallway. Fiman was advised that he had a warrant for his

While I was conducting my search of Fiman, two other people came out from the back area of the apartment. A security sweep of the back bedrooms was done to ensure there were no more threats, and none were found. Because Fiman had come out of the first bedroom on the right, and I had found drug paraphernalia on his person during my search I returned to that bedroom to see if Fiman had left anything in there that may be a violation. When I entered the room I noticed a silver colored digital scale with white residue sitting on the desk. Next to the desk was a small safe that appeared to be locked. Next to the safe was wooden chest with

CP 41-57.This timely appeal follows. CP 86.

C. ARGUMENT

1. THE POLICE ILLEGALLY ENTERED MR. HAUGEN'S HOME TO ARREST A NON-RESIDENT WITHOUT PROBALBE CAUSE OR EXIGENT CIRCUMSTANCES IN VIOLATION OF BOTH THE FOURTH AMENDMENT AND THE WASHINGTON CONSTITUTION.

Without a search warrant, consent or an exigent circumstance, the police, entered Haugen's home to serve a four month old arrest warrant on Fiman, a non-resident, guest. Haggerty spoke to B. Haugen through an open window of his apartment and asked B. Haugen to meet Haggerty at the front door. CP 16-38; 70-74; RP 5, 7, 9. B. Haugen complied and opened the door. CP 16-38; 70-74. The police saw Fiman in the hallway duck into B. Haugen's bedroom for a moment: the first bedroom and then return to the hallway. CP 16-38; 41-54; 70-74.

After arresting Fiman in the hallway without incident, CCO Boone entered B. Haugen's bedroom and observed a scale and white residue which Fiman confirmed was methamphetamine. CP 16-38; 70-74. After Fiman confirmed the presence of drugs, Haggerty sought and obtained a telephonic search warrant to search the first bedroom which belonged to B. Haugen, Justin Haugen's brother. CP 16-38; 70-74. Haggerty knew that Fiman did not live at this residence because DOC had a different address for Fiman, but omitted this fact when requesting the search warrants. CP 16-38; 41-54; 70-74; RP 5. Fiman's address was listed in the police report. Id.

When Boone was searching B. Haugen's bedroom J. Haugen asked to get his cell phone from his room. Haggerty followed J. Haugen to the back bedroom and en route asked J. Haugen if there were drugs in his room. J. Haugen denies answering "yes", but Haggerty informed Judge Buzzard that J. Haugen admitted to having drugs in his bedroom. Haggerty obtained a warrant for J. Haugen's bedroom without informing the judge that Fiman was not a resident. CP 41-57.

Conclusions of law relating to the suppression of evidence are reviewed de novo. *State v. Winterstein*, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009). Challenged findings entered after a suppression hearing must be

supported by substantial evidence to become verities on appeal. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003).

a. Warrantless Intrusion Violated Article 1, Section 7.

When a party claims both state and federal constitution violations, the reviewing Court first examines the state constitution. *State v. Afana,* 169 Wn.2d 169, 176, 233 P.3d 879 (2010) (quoting *State v. Patton,* 167 Wn.2d 379, 385, 219 P.3d 651 (2009)). Article I, section 7, is not concerned with the reasonableness of a search, but instead requires a warrant before any search, whether reasonable or not. *State v. Eisfeldt,* 163 Wn.2d 628, 634, 185 P.3d 580 (2008); *State v. Monaghan*, 165 Wn.App.782, 787, 266 P.3d 222 (2012); *State v. Morse,* 156 Wn.2d 1, 9, 123 P.3d 832 (2005). "This creates an almost absolute bar to warrantless arrests, searches, and seizures, with only limited exceptions...." *State v. Valdez,* 167 Wn.2d 761, 772, 224 P.3d 751 (2009) (internal quotation marks and citations omitted). Because article I, section 7, provides greater protection to individuals than the Fourth Amendment, it is the proper analytic framework for this issue. *Eisfeldt,* 163 Wn.2d at 636.

Article I, section 7 of the state constitution provides: "[n]o person shall be disturbed in his private affairs, or his home invaded, without

authority of law." The Fourth Amendment precludes only "unreasonable" searches and seizures without a warrant, while article I, section 7 prohibits any disturbance of an individual's private affairs "without authority of law." *Valdez,* 167 Wn.2d at 772.

A person's residence is a "private affair" entitled to the greatest constitutional protections. " *State v. Young*, 123 Wn.2d 173, 185, 187, 867 P.2d 593 (1994). The "heightened protection afforded state citizens against unlawful intrusion into private dwellings places an onerous burden upon the government to show a compelling need to act outside of our warrant requirement". *Young*, 123 Wn.2d at 600 (*quoting State v. Chrisman*, 100 Wn.2d 814, 822. 676 P.2d 419 (1984)).

b. Arrest Warrant For Non-Resident On Probation.

Under Wash. Const. article I, section 7, the police must have "probable cause" to believe that the suspect named in the arrest warrant is a resident of the home that they wish to enter. *State v. Hatchie*, 161 Wn.2d 390, 404, 166 P.3d 698 (2007). ("probable cause" is the minimum standard for determining when police have reason to believe a place to be entered is the suspect's residence); *State v. Hatchie*, 133 Wn.App. 100, 113-14, 135 P.3d 698 (2007), aff'd,161 Wn.2d 390.

Thus, "[t]he existence of an arrest warrant and the belief that the subject **may be a guest** in a third party's home is insufficient legal authority to enter the home." *State v. Anderson*, 105 Wn.App. 223, 231, 19 P.3d 1094 (2001); *Accord*, *Steagald v. United States,* 451 U.S. 204, 213, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981); *State v. Winterstein*, 167 Wn.2d at 630; *Hatchie*, 161 Wn.2d at 403. "[A]n arrest warrant ..... allows the police only the limited ability to enter the residence, find the suspect, arrest him, and leave. Police action that deviates from the narrow bounds of this authority has no authority of law." *Hatchie*, 161 Wn.2d at 399.

When, the person named in the arrest warrant is not a resident but a guest, third party privacy rights are implicated. *State v. Winterstein*, 167 Wn.2d 620, 630, 220 P.3d 1226 (2009). In order to protect these third party privacy interests, Washington Courts have interpreted our state constitution more broadly than federal law. *Hatchie*, 161 Wn.2d at 404. Even when the arrestee is a probationer, the probation officer (CCO Boone) "must have probable cause to believe that a probationer resides at a particular residence before searching that residence." *Winterstein*, 167 Wn.2d at 630.

Probable cause exists when the officer has information that would lead a person of reasonable caution to believe that the probationer lives at the

place to be searched. Id. The information known to the officer must be reasonably trustworthy. Id. Only facts and knowledge available to the officer at the time of the search should be considered. *Winterstein,* 167 Wn.2d at 630–31.

Winterstein was on probation and failed to report to his CCO. *Winterstein*, 167 Wn.2d at 625. DOC had Winterstein's latest address as 167 646 ½ Englert Rd, but received an anonymous tip that there was a possible meth lab at 646 Englert Rd. *Winterstein,* 167 Wn.2d at 625-26. The police went to this address without a warrant and were granted permission to enter the home. Id. The police searched the house for people and gathered all present in the living room. Id. The police did not find anything incriminating in Winterstein's bedroom but found methamphetamine paraphernalia in the other bedrooms. There was no evidence that the police obtained consent to search these bedrooms. Id.

Winterstein was not present but his girlfriend told police that Winterstein still lived at the address. *Winterstein,* 167 Wn.2d at 626. Without a warrant the police also searched the adjacent residence: 646 ½ Englert Rd., and found many boxes. Id. Based on observing paraphernalia, the police sought and obtained a warrant. Id. Winterstein was charged with

manufacturing methamphetamine. Id. The State Supreme Court held that the trial court applied the wrong standard and the state did not establish that police had probable cause to believe that Winterstein lived at 646 Englert Rd. Rather the Court of Appeals upheld the search under the *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), "reasonable suspicion" standard that Winterstein lived at 646 Englert Rd. Accordingly, the Court remanded for application of the probable cause standard to determine if probable cause existed. Id.

Here the trial court did not enter any findings or conclusions regarding the standard applied to the warrantless intrusion but simply concluded that "[l]aw enforcement was allowed to enter the residence to place Fiman under arrest when he was observed inside the home." FOF 3 CP 68-74. This conclusion was not supported by substantial evidence because Haggerty knew that Fiman lived elsewhere and the prosecutor argued that the police were not required to share this information with the judge issuing the search warrant because the police had an arrest warrant for Fiman which the prosecutor believed could be served in the home of a third party without a search warrant. CP 58-65.

The police in this case and in *Winterstein* knew that the probationer's

did not live at the addresses they wished to search and in both cases, were interested in searching for drugs. Additionally, in both cases, there were no exigent circumstances or consent in to the warrantless searches. The arrest warrant for Fiman was four months old and the police were not in hot pursuit. CP 70-74.

Here, as in *Winterstein,* the police searched a residence that they knew was not Haugen's, only here Haugen was not even the subject of the arrest warrant, he was a "third party". When the police sought entry into Haugen's home to arrest Fiman without probable cause to believe that Fiman was a resident, the intrusion was illegal. *Winterstein*, 167 Wn.2d at 624, 630. Under article1, section 7 and the Fourth Amendment, the police could not search Haugen's residence without consent, a search warrant or an exigent circumstances.

The trial court did not discuss *Winterstein*, but instead relied exclusively on *State v. McKinney,* 49 Wn.App. 850, 746 P.2d 835 (1988) to justify the warrantless home entry in this case notwithstanding that the police knew that Fiman was a guest. CP 68-74. In *McKinney*, Division III permitted a warrantless entry into an apartment to arrest a guest on a misdemeanor warrant where the offender had previously fled custody. *McKinney*, 49

Wn.App. at 858. The Court cited *Chrisman II, Nelson* and *Wood's* prohibition against warrantless home entry with approval but distinguished these cases on grounds that in *McKinney*, the fact that the arrestee had a propensity to flee provided "strong justification" for entering the apartment without a warrant. *McKinney*, 49 Wn. App. at 840, *citing Chrisman* II at 822. The Court in *McKinney* analogized the situation of a defendant who had fled custody to a hot pursuit. *McKinney*, 49 Wn.App. at 859.

McKinney does not apply to this case because here, in contrast to *McKinney*, the police were not in hot pursuit and there was no evidence that Fiman had a propensity to flee. Here the police had a different home address for Fiman and only travelled to Haugen's apartment based on an anonymous that at that time, Fiman was present in the Haugen residence. CP 41-57. If the police wanted to arrest Fiman in the Haugen home, they were required to either obtain consent or wait for Fiman to leave. The information from the anonymous tip did not provide an exigent circumstance to justify the warrantless home entry, nor reasonable belief or probable cause that Fiman resided with Haugen. Accordingly, the warrantless entry in Haugen's home violated Haugen's constitutional rights under Wash. Const. art 1 section 7 and under the Fourth Amendment.

c. No Exigent Circumstances: No Evidence of Hot Pursuit.

Hot pursuit requires "some sort of chase". *State v. Counts*, 99 Wn.2d 54, 59, 659 P.2d 1087 (1983) (*quoting*, *United States v. Santana*, 427 U.S. 38, 43, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976) (Italics in *Counts*.) In *Counts*, the police went to Count's home to arrest him as a suspect in a burglary, but his father refused to let the police enter the family home. After an hour of argument with the father, the police ignored the father's refusal to consent and entered the home to arrest Counts. *Counts*, 99 Wn.2d at 59. On appeal the state argued "hot pursuit". Id.

The Supreme Court reversed holding that the police did not have any justification for the illegal warrantless home entry because they were not in hot pursuit and could easily have maintained surveillance while obtaining a warrant instead of arguing with Count's father. *Counts*, 99 Wn.2d at 60. Citing, *Payton*, the Court held the warrantless entry violated Count's constitutional rights. Id.

Here, the state cannot argue on appeal that the warrantless home entry was justified under the hot pursuit exception because there was no evidence of any "sort of chase" or "hot pursuit" and the police could easily have

maintained surveillance once they saw Fiman, and simply waited for him to leave the Haugen residence.

d. Protective Sweep a Pretext

It was error for the trial court not to suppress the evidence obtained after Haggerty followed J. Haugen to his bedroom when the police had previously cleared all occupants from the back of the apartment. CP 68-74.

While making a lawful arrest, officers may conduct a reasonable "protective sweep" of the premises for security purposes. *State v. Hopkins*, 113 Wn.App. 954, 959-60, 55 P.3d 691 (2002) (*citing Maryland v. Buie*, 494 U.S. 325, 334-35, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990)). The sweep may last "no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises." *Buie*, 494 U.S. at 335-36.

A security sweep is related to and an extension of the *Terry* frisk or pat-down. *See Buie,* 494 U.S. at 331-34. The scope of such a sweep is limited to a cursory visual inspection of places where a person may be hiding. *Hopkins*, 113 Wn.App. at 959. If the area immediately adjoins the place of arrest, the police need not justify their actions by establishing a concern for their safety. A security sweep was conducted in this case and all occupants

cleared before Haggerty followed J. to his bedroom and engaged in questioning J. Hagen about drugs.

However, when the sweep extends beyond this immediate area, there must be articulable facts which, taken together with rational inferences, would warrant a reasonable and prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the scene. *Hopkins*, 113 Wn.App. at 959-60; *Buie*, 495 U.S. at 335-337. Here, the police knew that no one was hiding because they had previously conducted a security sweep of the J. Haugen's bedroom.

Hopkins is instructive. Therein, the police armed with a search warrant to find Hopkins, went to Hopkins' property to arrest her on outstanding warrants. The search warrant permitted entry into Hopkins' property "and there diligently search for [her], to include any and all out buildings or trailers located on the property and any document, paperwork, identification cards, mail and/or personal property pertaining to Cheryl Hopkins." Ho*pkins,* 113 Wn.App. at 956.

The police saw two men standing and talking near a shed and one man entered and exited the shed. Ho*pkins,* 113 Wn.App. at 957. The police secured both men with handcuffs and then went to Hopkins' mobile home and

arrested her there. Id. After Hopkins arrest, the police conducted a security sweep of the shed to ensure there were no other individuals inside. Inside the shed they found a freezer, opened it, and discovered methamphetamine lab-related items. Id. The officers re-entered the shed and entered a trailer whose door was wide open. The police testified they wanted to clear the shed to ensure nobody else was hiding inside.

The police found methamphetamine lab-related items inside the shed. *Hopkins,* 113 Wn.App. at 958. The police requested and received a telephonic warrant to search for controlled substances. The trial court denied the motion to suppress, ruling that officers conducted a valid protective sweep. Id.

The Court of Appeals reversed and held that a protective sweep outside the immediate area where an arrest occurred cannot be based solely on a general desire to be sure no one is hiding. *Hopkins,* 113 Wn.App. at 960. The state did not present any facts that would have led the police to reasonably believe that other persons were present. "Indeed, the facts suggest the deputies did not have even a *subjective* fear that other, dangerous persons were in the shed or trailer: One officer was left to watch the two men, who were being restrained near the shed, while the remaining six went to Ms.

Hopkins' residence to arrest her." *Hopkins,* 113 Wn.App. at 960-61.

Here, similar to *Hopkins*, once Fiman was arrested, and the initial security sweep complete, the police were not permitted to follow J. Haugen to his bedroom because the state did not present any facts to support the notion that the police had a reasonable, objective belief that other dangerous people were in the back bedroom. On this point *Hopkins* is indistinguishable. Here unlike in Hopkins, however, the police did not have an arrest warrant for Haugen and did not have any reason to believe that Haugen or his siblings were dangerous, and all occupants had already been removed from the apartment. Once Fiman was arrested, the police no longer had any authority at law to continue to search, that is to follow J. Haugen to his bedroom and question him about drugs. . This is however precisely what the police did in this case only without probable cause to believe that Fiman was a resident and where the resident was not a suspect.

Here there were absolutely no objective or subjective security concerns. Rather Haggerty, knowing that he had arrested J. Haugen for drugs in the past, wanted to search and find more drugs to permit him to arrest J. Haugen. There were insufficient facts presented to even suggest that Haggerty was concerned that a person was hiding.

Accordingly, under the Fourth Amendment, which provides greater protection than article 1, section 7, Haggerty's following J. Haugen to his bedroom was not justified as a security sweep. The sweep of Haugen's house just as in *Hopkins* was based on a general desire to find drugs, but not to eliminate an objective believe that danger existed. The search here was an impermissible pretext to search for drugs. *Hopkins,* 113 Wn.App. at 960.

Similarly in *State v. Kull*, 155 Wn.2d 80, 18 P.3d 307 (2005), the police armed with an arrest warrant for Kull, went to her apartment and saw her in the laundry room. The police arrested Kull and offered to let her post a $500 bail to avoid being taken to jail. Id. *Kull,* 155 Wn.2d at 82-83. Kull asked her friend Miller who was in the apartment to get her purse so that she could pay the bail. The officer followed Miller into the bedroom and observed a white substance he claimed he could determine was cocaine. Id.

The state argued that after Kull was arrested in the laundry room of her apartment, she agreed to let the officer into her apartment. *Kull,* 155 Wn.2d at 85. The State argued that once in the apartment, the officer followed Miller to the bedroom door due to safety concerns. The Court of appeals did not find that Kull consented to the entry but ruled it was justified on safety concern grounds. *Kull,* 155 Wn.2d at 86.

The Supreme Court reversed holding that the police were not justified in entering the bedroom without a warrant under safety concerns where Kull was arrested, placed in handcuffs and she was cooperative. *Kull,* 155 Wn.2d 87. There also was no evidence to support the conclusion that the police objectively believed Miller or Kull to be armed or that either of them threatened the officers, or that Kull could have escaped or that she attempted to do so. *Kull,* 155 Wn.2d 87.

Under *Kull*, police are not permitted to simply enter a dwelling to search for drugs or anything else without evidence that the suspect was armed and dangerous, or that others presented a threat to the police or a threat to flee. Id. Here, as in *Kull*, Fiman was in handcuffs, arrested and cooperative. When Haugen asked to get his cell phone this did not create a safety issue just as in *Kull*, when the police followed Miller to Kull's bedroom to get her purse. The police activity in this case is virtually identical to Kull and equally as illegal.

The Supreme held that when the suspect is in handcuffs, under arrest and cooperative, the police may not follow a person into the house while that person retrieves a personal item, unless the police have an objectively reasonable belief that there is a danger. *Kull,* 155 Wn.2d at 87, 89. Here the

state did not present any evidence that when Haggerty followed and questioned J. Haugen he objectively or even subjectively believed that anyone in the Haugen home was a threat to them. *Kull,* 155 Wn.2d 87. Accordingly, the evidence seized from J. Haugen's bedroom must be suppressed. *Kull,* 155 Wn.2d at 87, 89; *Hopkins,* 113 Wn.App. at 960.

e. No Independent Source.

The state argued and the trial court concluded that the evidence of drugs in J. Haugen's bedroom was the result of an independent source: namely J. Haugen's admission in his home after the police impermissibly followed him to his bedroom and illegally questioned him in his residence. CP 41-54. The notion of an independent source does not validate the admission when the police misconduct produced the admission because without the illegal entry into the Haugen residence Haggerty would not have been able to follow and question Haugen. *State v. Eserjose*, 171 Wn.2d 907, 259 P.3d 172 (2010).

In *Eserjose*, the State Supreme Court implicitly adopted the independent source doctrine under *Brown v. Illinois*, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975) as explained by the Connecticut Supreme Court:

> Even though a detention is illegal, if the confession is truly voluntary and the causation factor of the illegal detention is so weak, or has been so attenuated, **as not to have been an operative factor** in causing or bringing about the confession, then the connection between any illegality of detention and the confession may be found so lacking in force or intensity that the confession would not be the fruit of the illegal detention.

(Emphasis added) Eserjose, 171 Wn.2d at 180, (quoting, *State v. Traub*, 151 Conn. 246, 250, 196 A.2d 755 (1963)). Thus , the attenuation doctrine applies only to evidence obtained legally, *i.e.* where the police misconduct did not produce the confession. *Eserjose*, 171 Wn.2d at 183-84.

"The attenuation doctrine considers the "purpose and flagrancy of the official misconduct.'" *Eserjose*, 171 Wn.2d at 184 (quoting, *Brown*, 422 U.S. at 604). If the record shows that police disregarded the warrant requirement for the purpose of securing a confession, the confession will be suppressed. Similarly, if the record shows that an illegal arrest induced the confession, the confession will be excluded. *Eserjose*, 171 Wn.2d at 184 (*citing Brown*, 422 U.S. at 604).

In *Eserjose*, the police were informed that Eserjose burgled a coffee stand. *Eserjose*, 171 Wn.2d at 174. The police went to Eserjose's home without any warrants and asked Eserjose if the other suspect was home. Id. Eserjose left the door open and said he would get the other suspect.

Eserjose's father invited the police to come inside the home. Id. After one minute the police went upstairs and arrested Eserjose and the other suspect outside a bedroom in the hallway. Id.

The police put Eserjose in a police car, provided Miranda and did not ask any questions about the burglary. *Eserjose*,171 Wn.2d at 174-75. Eserjose was again advised of his *Miranda* rights which he waived and confessed to the burglary. *Eserjose*, 171 Wn.2d at 175. The Supreme Court held that Eserjose's confession was not attributable to the illegal arrest because he was not questioned during the illegal home entry and Eserjose did not confess until after he was in police custody based on probable cause, and he had been twice advised of his Miranda rights. *Eserjose*, 171 Wn.2d at 183-84.

This case is factually distinguishable but legally on point because J. Haugen's statements to police were the product of the police misconduct. In *Eserjose*, the police did not question Eserjose in his home but in the police station and twice provided Miranda. Here, the police questioned J. Haugen in his home where they had no legal right to be present and there was no Miranda and no intervening event to attenuate the illegal home entry and search with the illegal questioning.

In violation of *Eserjose*, the record shows that Haggerty disregarded

the warrant requirement by following J. Haugen to his bedroom and questioning him for the purpose of securing a confession. Under *Eserjose*, the confession must be suppressed.

In *State v. Smith*, 177 Wn.2d 533, 303 P.3d 1047 (2013), another independent source case, the police went to a motel, knocked on the door and arrested Smith on an outstanding warrant. *Smith*, 177 Wn.2d at 537. At the door, the police saw an injured person, Quabner. Id. The police entered the motel room after having arrested Smith. Id. The Supreme Court rejected application of the independent source doctrine as a justification for the entry into the room after the arrest because it was "impossible to extricate the officers' presence at the motel room threshold and their observation of Quabner from the illegal search the officers performed just prior to arriving at the threshold. The Supreme Court held that the search could not be justified by the independent source doctrine. " *Smith*, 177 Wn.2d at 540.1

In this case, the police had a legitimate purpose to arrest Fiman, but they did not have the authority of law to serve the arrest warrant in the Haugen residence without a search warrant. Here as in *Smith*, the independent

---

1 The Court upheld entry into room under the community caretaking function because the police observed the badly injured Quabner. *Smith*, 177 Wn.2d at 542.

source doctrine is inapplicable because there was no intervening event to interrupt the illegal home entry, the illegal initial search and security sweep, and Haggerty following and questioning J. Haugen into an area away from the first bedroom. It is impossible to extricate the illegal police presence in Haugen's home from the police illegal observations of drugs in the bedrooms and questioning J. Haugen.

J. Haugen was not a suspect and if the police had not illegally entered the Haugen residence, the police would not have been permitted to follow J. Haugen and question him in a custodial like situation without Miranda warnings. Suppression is required in this case because there is no evidence that to justify the independent source doctrine. *Smith*, 177 Wn.2d at 540.

f. Remedy is suppression.

When the police illegally obtain evidence in violation of article 1, section 7, the remedy is suppression of the illegally obtained evidence. *State v. Ross* 141 Wn.2d 304, 312, 4 P.3d 130 (2000); *State v. White*, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982), *State v. Graham*, 130 Wn.2d 711, 927 P.2d 227 (1996).

"The important place of the right to privacy in Const. art. 1, 7 seems to us to require that whenever the right is unreasonably violated, the remedy

must follow." Accordingly, the fruits of warrantless searches requires suppression of the illegally obtained evidence. *Ross* 141 Wn.2d at 312; *White*, 97 Wn.2d at 110.

The Court in *Ettennhofe*r, cited *Ross* and *White* with approval and suppressed the fruits of a telephonic warrant that although supported by probable cause, was never executed in writing. *State v. Ettenhofer*, 119 Wn. App. 300, 309, 79 P.3d 478 (2003). This Court held suppression was required under article 1, section 7, because Ettenhoffer's constitutional rights against unreasonable searches, rendered the search invalid as a matter of law. *Ettenhoffer*, 119 Wn. App. at 307.

Here, as in *Ettenhoffer*, the police search initially without a search warrant and later without a valid search warrant, unreasonably violated Haugen's rights under Article 1, section 7 prohibition against warrantless searches. Under *Ettenhoffer*, the lack of a search warrant and the later invalid search warrant did not provide the required authority of law to permit entry into the Haugen residence. For these reasons, this Court must suppress the illegally obtained evidence. *Kull,* 155 Wn.2d at 89.

g. Suppression Required Under the Fourth Amendment.

If, based on objective evidence, the police lack probable cause to believe that the subject of the arrest warrant is a resident of the home they wish to enter, under the Fourth Amendment, the arrest warrant does **not** authorize the police to enter the home and evidence seized must be suppressed. *Steagald*, 451 U. S. at 211-12, 222.

Constitutional error is harmless only if the Court convinced beyond a reasonable doubt that any reasonable jury would reach the same result absent the error, and where the untainted evidence is so overwhelming that it necessarily leads to a finding of guilt. *State v. Burke*, 163 Wn.2d 204, 222, 181 P.3d 1 (2008); *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 17, L.Ed.2d 705 (1967). Where the error is not harmless, the defendant must have a new trial. *State v. Easter,* 130 Wn.2d 228, 2442, 922 P.2d 1285 (1996).

Here, there was no other evidence to establish possession of illegal narcotics. The State cannot establish their case against J. Haugen without the illegally obtained evidence, thus under the" overwhelming untainted evidence test, the error in admitting the evidence seized from J. Haugen's bedroom was not harmless error. Suppression is required. *Easter,* 130 Wn.2d at 242.

2. IN SUPPORT OF THE TELEPHONIC REQUEST FOR THE SEARCH WARRANTS, THE POLICE MADE RECKLESS AND MATERIAL OMMISIONS OF FACT THAT IF INCLUDED WOULD HAVE PRECLUDED ISSUANCE OF THE SEARCH WARRANTS.

Trial counsel argued that the search warrants were invalid because the police knew that Fiman did not live at Haugen's apartment and recklessly omitted this material fact when applying for the search warrants. The state conceded that the police knew Fiman lived elsewhere but argued that the police were not required to inform the judge. CP 58-65. While this Court need not address this issue because the initial home entry was illegal, should this Court wish to consider a second basis for suppressing evidence, this issue is available and for the sake of completeness will be discussed in brief hereunder.

Under article 1 section 7 and the Fourth Amendment, the search warrants were invalid here because Haggerty, the search warrant affiant, recklessly omitted the known fact that Fiman was not a resident of the apartment where he sought a search warrant, and Fiman's residence was necessary to finding a probable cause determination. *Franks v. Delaware*,

438 U.S. 154, 56, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978); *State v. Chenoweth*, 160 Wn.2d 454, 158 P.3d 595 (2007).

Under the Fourth Amendment, factual inaccuracies or omissions in a warrant affidavit may invalidate the warrant if the defendant establishes that they are (a) material and (b) made in reckless disregard for the truth. *Franks*, 438 U.S. at 155-56. Under article 1, section 7, the "authority of law" prong requires that exceptions to the warrant requirement be jealously guarded. *Chenoweth*, 160 Wn.2d at 463 This Court reviews de novo questions regarding the construction of our state constitution. *State v. Norman*, 145 Wn.App. 578, 589, 40 P.3d 1161 (2002).

Once the defendant establishes established the existence of material inaccuracies or omissions, the Fourth Amendment shifts the burden to the State to disprove reckless or intentional conduct. *Chenoweth*, 160 Wn.2d 475. This burden-shifting is required because "it is unduly burdensome for the defendant to prove recklessness or intention given that the affiant possesses the relevant information to explain the reasons for factual inaccuracies or omissions." *Chenoweth*, 160 Wn.2d at 475 (citing *State v. Theodor*, 8 Cal.3d 77, 102, 104 Cal.Rptr. 226, 501 P.2d 234 (1972) and 2 *Wayne R. Lafave, Search and Seizure: A Treatise on The Fourth Amendment,* section 4.4(d) at

558 (4th ed. 2004).

A reckless omission rises to the level of a misrepresentation, when "the challenged information was necessary to the finding of probable cause." *Franks,* 438 U.S. at 156. The trial court clearly erred in failing to find that Haggerty's failure to include that Fiman's status as a guest was a material omission, because under the test set forth in the *Franks* to determine the validity of the warrant, if the omission was added to the affidavit , the warrant could not have been issued because there were no exigent circumstances and Fiman did not live at Haugen's residence. *Franks*, 438 U.S. 156; *State v. Clark*, 143 Wn.2d 731, 753, 24 P.3d 1006 (2001). If probable cause no longer exists after the material omissions are included, the warrant fails. Id.

It is indisputable that Fiman's status as a guest was a material fact. Here, after the initial illegal entry, the police obtained a search warrant for Haugen's apartment based on CCO Boone entering one of the bedrooms after Fiman was secured and arrested. Haggerty knew that Fiman did not live at Haugen's residence and if Haggerty had informed the judge of this fact and the fact of the illegal home entry, probable cause would have been defeated because the police were illegally inside the Haugen home and there was no authority of law for this intrusion without a warrant. CP 41-57.

Haugen presented sufficient evidence of the material omission to shift the burden to the state to prove the material omissions were not reckless, but the trial court erroneously failed to make this finding and erroneously entered a finding that Haugen failed to meet his initial burden to establish a material omission. CP 68-74. *Chenoweth*, 160 Wn.2d 475. Under *Franks*, 438 U.S. at 155-56, the warrant was invalid because Haggerty omitted the material fact that he knew that Fiman was a guest and the omission was knowing and reckless because if the judge had been informed that Fiman was a guest, this would have defeated the constitutional requirement that the facts support probable cause. *Chenoweth*, 160 Wn.2d at 464, 471. (*citing*, RCW 10.79.015; CrR 2.3).

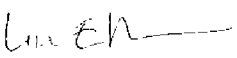
A trial court's finding on whether an affiant deliberately excluded material facts is a factual determination, upheld unless clearly erroneous. *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985) (citing *In re Welfare of Sego,* 82 Wn.2d 736, 513 P.2d 831 (1973). Here, contrary to the trial court's conclusions, suppression is required because there was substantial evidence that the warrant contained the reckless omission of the material fact that Fiman was not a resident in the Haugen apartment. *Chenoweth*, 160 Wn.2d at 611.

D. CONCLUSION

Mr. Haugen respectfully requests this Court reverse his conviction, suppress the evidence and remand for dismissal with prejudice.

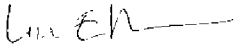
DATED this 14th day of January 2015

Respectfully submitted,



LISE ELLNER
WSBA No. 20955
Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Lewis County Prosecutor 345 West Main Street, Second Floor Chehalis, WA 98532 appeals@lewiscountywa.gov; Paul.Masiello@lewiscountywa.gov, and Justin Haugen 21510 Zenkmere Valley Centralia, WA 98531 a true copy of the document to which this certificate is affixed, On January 14, 2015. Service was made by depositing in the mails of the United States of America, properly stamped and addressed to Mr. Haugen and electronically to the prosecutor.



APPENDIX A
STIPULATED TRIAL FINDIGNS AND
CONCLUSIONS. CP 70-74

Rec'd & Filed
Lewis County Superior Court

JUL 24 2014

Kathy A. Brack, Clerk
By _____ Deputy

46

IN THE SUPERIOR COURT OF STATE OF WASHINGTON FOR LEWIS COUNTY

STATE OF WASHINGTON, Plaintiff, vs. JUSTIN WARREN HAUGEN, Defendant	No: 13-1-00855-1 **STIPULATED FACTS, CONCLUSIONS OF LAW, AND ORDER FOR BENCH TRIAL.**

THIS MATTER having come before the Honorable Nelson Hunt of the above-entitled Court for a Stipulated Facts Bench Trial on July 21, 2014; the defendant being present and represented by his attorney, Mike Underwood; the State being represented by Deputy Prosecuting Attorney Paul Masiello; the defendant having stipulated to the admissibility and sufficiency of the following facts and the Court having considered the following facts for the purpose of rendering a verdict of guilty or not guilty beyond a reasonable doubt, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1 On December 12, 2013, Officer Mike Smerer and Officer Adam Haggerty with the Centralia Police Department, along with Detective Robin Holt with the Chehalis Police Department, received information that Mark Fiman was at 1013 Seammon

JONATHAN L. MEYER
County Prosecutor
345 West Main Street, Floor 2
Chehalis, Washington 98532
(360) 740-1240 Telephone

Creek Road, Apt. J-6 with Justin and Brian Haugen, in Centralia, Washington, Lewis County. Justin Haugen is the defendant in this case.

2. A records check of Mr. Fiman revealed a felony warrant out of Thurston County, a second felony warrant out of DOC, and a third misdemeanor warrant from Centralia Municipal Court. Mr. Fiman was being supervised by Community Corrections Officer Mike Boone. Officer Haggerty contacted CCO Boone about Mr. Fiman's location, and asked for assistance.

3. Prior to arriving at the Scammon Creek Road address, all law enforcement officers involved observed a recent booking photo of Mr. Fiman.

4. As officers arrived at the Scammon Creed Road address, Officer Haggerty observed Brian Haugen in the upstairs apartment window. The window was opened, and Officer Haggerty asked Brian to join him at the front door.

5. When officers arrived at the front door, Brian Haugen opened the door. Beyond Brian, Officer Haggerty saw Mr. Fiman walking down the hallway towards law enforcement. Officer Haggerty told Mr. Fiman he was under arrest, and entered the apartment. Mr. Fiman quickly entered into the first bedroom on the right as officers entered the apartment.

6. While officers remained in the living room of the apartment, they ordered Mr. Fiman out of the bedroom. Mr. Fiman eventually left the bedroom and walked towards the living room. Once in the living room, Mr. Fiman was placed in custody by CCO Boone.

JONATHAN L. MEYER
County Prosecutor
345 West Main Street, Room 2
Chehalis, Washington 98532
(360) 740-1240 Telephone

7. While Mr. Fiman was being searched incident to his arrest by CCO Boone, two other people came out from the back of the apartment. A security sweep of the apartment was done to ensure there were no more threats. During this search, Officer Haggerty remained with Mr. Fiman in the living room.

8. During his security sweep of the apartment, CCO Boone entered the bedroom Mr. Fiman had run into. Seeing no threats in this room, CCO Boone searched other bedrooms in the back of the apartment. On his way back to the living room, CCO Boone re-entered the bedroom Mr. Fiman had ran into and observed a silver digital scale with white residue sitting on the desk. There was also a locked safe next to the desk. A homemade water bong-type smoking device, commonly used for smoking Methamphetamine, was also found in the closet of the bedroom. From where Officer Haggerty was standing, he could not and would not have been able to see CCO Boone's multiple entries into this bedroom.

9. Once CCO Boone returned to the living room, Mr. Fiman was being read his Miranda warnings. CCO Boone then confronted Mr. Fiman with what he had found in the bedroom. CCO Boone did not inform anyone that he had made multiple entries into the bedroom Mr. Fiman stated the scale was his, and also the contents of the safe. When asked what was in the safe, Mr. Fiman eventually stated "dope stuff." When asked what the white stuff on the scale was, he stated it was Methamphetamine.

10. Based on Mr. Fiman's statements, a search warrant for the bedroom was obtained. After the search warrant was obtained, Officer Haggerty went back into the apartment and showed it to the Haugen brothers. Justin Haugen asked if he could get his cell

JONATHAN L. MEYER
County Prosecutor
345 West Main Street, Floor2
Chehalis, Washington 98531
(360) 740-1240 Telephone

phone from his bedroom so that he could call his sister. Officer Haggerty walked with Justin back to his bedroom. Justin obtained his cell phone, and walked back to the living room with Officer Haggerty.

11. While walking back to the living room, Officer Haggerty asked Justin if he had any drugs in his room. Justin stated that he did, and that they were in the camouflage case on his night stand. Justin was advised of his Miranda warnings, and waived his rights. Justin again told Officer Haggerty that he had Methamphetamine in his bedroom.

12. Based on these statements, Officer Haggerty obtained an addendum to the original search warrant to also allow a search of Justin's bedroom. During the search of Justin's bedroom, officers found:

    One baggie containing a white crystalline substance that field-tested positive as Methamphetamine;

    10 small blue pills identified by the Poison Control Center as Alprazolam;

    Seven Clonazepam pills of various doses;

    Numerous pipes consistent with Methamphetamine use; and

    Indicia linking Justin Haugen to the bedroom.

13. The items discovered in Justin's bedroom were sent to the Washington State Patrol Crime Lab and tested respectively as Methamphetamine, Alprazolam, and Clonazepam.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over defendant and the present subject matter.

JONATHAN L. MEYER
County Prosecutor
345 West Main Street, Floor2
Chehalis, Washington 98531
(360) 740-1240 Telephone

2. The defendant, Justin Warren Haugen, is guilty, beyond a reasonable doubt of the crime of Possession of a Controlled Substance, to wit: Methamphetamine, RCW 69.50.4013; Possession of a Controlled Substance, to wit: Alprazolam, RCW 69.50.4013; and Possession of a Controlled Substance, to wit Clonazepam, RCW 69.50.4013.

ORDER

1. Based upon the foregoing Findings of Fact and Conclusions of Law, the defendant, Justin Warren Haugen, is guilty of the crimes alleged in the Information.
2. A Judgment and Sentence consistent with these findings and conclusions shall be entered.

Dated this 24 day of July, 2014.

Judge Nelson Hunt

Paul Masiello, WSBA # 33039
Deputy Prosecuting Attorney

Mike Underwood, WSBA # 13218
Attorney for Defendant

Justin Warren Haugen

JONATHAN L. MEYER
County Prosecutor
345 West Main Street, Floor2
Chehalis, Washington 98531
(360) 740-1240 Telephone

ELLNER LAW OFFICE

January 14, 2015 - 5:36 PM

Transmittal Letter

Document Uploaded: 5-465795-Appellant's Brief.pdf

Case Name: State v. Haugen
Court of Appeals Case Number: 46579-5

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Appellant's__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Lise Ellner - Email: liseellnerlaw@comcast.net

A copy of this document has been emailed to the following addresses:

appeals@lewiscountywa.gov